

OPINION
53-126

January 22, 1953 (OPINION)

WAR MEMORIAL FUND

RE: What Constitutes War Memorial

Referring to your letter of today relative to H.B. 585, proposed for enactment at this session, we cannot, of course, say just what may be built as a memorial under this Act. That can only be done by the courts when considering a distinct proposed memorial as in the case of Ophaug et al v. Hildre et al. 77 N.D. 221, 42 N.W. 2d 438. in that case the court said that the law, chapter 125 S.L. 1947, was intended to furnish "sufficient funds but to leave the matter of this kind of memorial entirely in the discretion of the board of county commissioners."

In the Ophaug case the court held that a county court house was a permissible building for a war memorial. And the court states that other cases have held that community buildings have been held to be proper memorials.

This office has frequently been asked as to whether a proposed building could be considered a memorial. Most of these proposed memorial buildings have been sponsored by some American Legion or other veterans' organization. Such buildings were to be in part meeting places for veterans, and in part for the community at large. We believe that, in practically every case, the building approved was, in part at least, for the common use of the public.

We believe a bridge, for instance, on a public highway has been considered a memorial. In fact, we believe the bridge between Bismarck and Mandan is commonly called a memorial bridge.

We know of no instance, however, where a public school building has been approved as a war memorial by this department or any court. Hospitals have also been approved as memorials when clearly designated by name or otherwise to be such memorial.

We can not say, generally, just what buildings or structures may be constructed under this law as memorials. We have indicated above the classes of structures which have been approved.

As the court said in the Ophaug case, the county commissioners have a wide discretion as to the use of the fund authorized by the law. And as a matter of law, the courts will not control in any manner the exercise of such discretion. And certainly no board of county commissioners will be compelled to use this money for any specific purpose.

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